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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

Amendment of Part 1 of the
Commission's Rules --
Competitive Bidding Proceeding

WT Docket No. 97-82

COMMENTS OF MOTOROLA, INC.

I. Introduction and Summary

Motorola, Inc. ("Motorola") hereby submits its comments in response to the *Notice of Proposed Rule Making* ("Notice") adopted by the Commission in the above-captioned proceeding on February 20, 1997.¹ In the *Notice*, the Commission solicits commenters' views on a uniform set of provisions to be used in conducting future spectrum auctions. The specific proposals outlined in the *Notice* are designed to "simplify the [Commission's] regulations and eliminate unnecessary rules wherever possible, increase the efficiency of the competitive bidding process, and provide more specific guidance to auction participants while also giving them more flexibility."²

Motorola generally acclaims the Commission's effort and intent to streamline the competitive bidding process and improve its overall efficiency. Motorola submits, however, that

¹ *Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding*, WT Docket No. 97-82 (released Feb. 28, 1997) (Order and Memorandum Opinion and Order and Notice) [hereinafter *Order and Memorandum Opinion and Order and Notice*].

² *Id.*, ¶ 2.

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the adoption of an explicit rule limiting the duration of freezes imposed in connection with spectrum auctions is a critical component of any effort to improve the efficiency of the competitive bidding process. Accordingly, as detailed below, Motorola urges the Commission to incorporate into its rules a requirement that all auction-related freezes must be terminated within 180 days after taking effect. Motorola submits that the adoption of such a rule will serve the public interest by promoting the goals that prompted the Commission to initiate this proceeding and by helping to ensure that radio spectrum is used effectively in response to the needs of the public.

II. Background

The Commission initiated this proceeding to undertake a “comprehensive examination”³ of the agency’s general competitive bidding rules for all auctionable services. In particular, in the *Order*, the Commission adopted rule changes amending Subpart Q of Part 1 of the Rules to reflect a number of clarifications and procedural changes that the agency found necessary on the basis of its experience in conducting the ten auctions held to date. Among other things, the *Order* specifies that the Commission will conduct regular quarterly auctions for defaulted licenses or unsold licenses that were previously auctioned and for which there are mutually exclusive applications, services with a small number of licenses, and services in which licenses are expected to have low values.⁴ In addition, the *Order* amends Subpart Q of Part 1 to:

³ *Order and Memorandum Opinion and Order and Notice*, ¶ 1.

⁴ *Id.*, ¶ 7.

(1) clarify that the Chief of the Wireless Telecommunications Bureau has delegated authority to implement all of the rules pertaining to auction procedures; (2) modify the short-form application (FCC Form 175) to include a certification indicating that an applicant seeking to use installment payments is not in default on any payment to the FCC for licenses or delinquent on any non-tax debt owed to a federal agency; and (3) contain more consistent procedures concerning the period of time a winning bidder is afforded to make its down payment after notification of winning bidder status.⁵

In addition, the *Notice* solicits comment on a variety of proposals and tentative conclusions aimed at simplifying applicable regulations, eliminating unnecessary rules, and increasing the efficiency of the competitive bidding process. In general, the proposals set forth in the *Notice* seek to establish a uniform set of provisions that will eliminate the need for separate, in-depth rule makings each time the Commission decides to resolve mutually exclusive licenses in a particular service via auction. The proposals delineated in the *Notice* are also designed to improve the efficiency of the competitive bidding process based on the suggestions of the Commission and interested parties after the benefit of having participated in numerous spectrum auctions.

In respects relevant here, the proposals contained in the *Notice* seek not only to improve the auction process itself, but also to identify any rule and policy changes that will make the competitive bidding process more responsive to the needs of licensees, subscribers, investors, and other affected entities. For example, the *Notice* contains a proposed modification to the anti-collusion rules aimed at lessening the deterrent impact of existing anti-collusion policies on

⁵ *Id.*, ¶¶ 6-16.

investors.⁶ In addition, in response to the demands of licensees – as well as several enumerated public interest benefits -- the Commission has proposed to modify its rules to permit all auction winners, including those against whom a petition to deny has been filed, to engage in pre-grant system construction after release of a Public Notice announcing the acceptance for filing of post-auction long-form applications.⁷

As detailed below, Motorola submits that another critical element of the Commission's effort to increase the efficiency of the competitive bidding process is the adoption of an explicit rule limiting the duration of any freeze imposed in conjunction with spectrum auctions to 180 days. Motorola is filing this pleading to augment the record with respect to the detrimental impact of application freezes that have remained in effect for periods far exceeding 180 days, and to document the need for a rule that will give service providers, investors, equipment manufacturers, end users, customers, and other affected entities certainty that such freezes will not be allowed to last indefinitely.

III. As Part Of The Commission's Overall Effort To Make Its Competitive Bidding Procedures More Efficient And More Effective, The Agency Should Adopt Rules Explicitly Limiting The Duration Of Any Freeze Imposed In Connection With Auction Procedures

In conjunction with the adoption of a *Notice of Proposed Rule Making* proposing to resolve future mutually exclusive applications for licenses in an existing service through

⁶ See *id.*, ¶¶ 100-02.

⁷ *Id.*, ¶ 104. Under the Commission's existing policies, it is clear that at least broadband PCS winning bidders that have a petition to deny filed against their application may not construct their facilities prior to license grant. See *Public Notice*, "Personal Communications Service Information, Broadband," Report No. CW-95-02 (released Apr. 12, 1995).

competitive bidding procedures, the Commission typically freezes the acceptance of new applications for licenses in that service while auction procedures and related rules are being developed. The experience in the 800 MHz SMR service best illustrates the serious detrimental impact of the protracted duration of these freezes – there, the freeze was imposed on August 9, 1994, and over two and a half years later, still remains in effect – on incumbent service providers, would-be newcomers, end users, equipment manufacturers, and members of the public.⁸

On August 9, 1994, in connection with the adoption of proposals to license the 800 MHz SMR service on a geographic area basis and to use competitive bidding to resolve mutually exclusive applications, the Commission instituted a freeze on the filing of new applications for 800 MHz SMR Category channels pending adoption of new service and auction rules.⁹ After the SMR Category freeze resulted in a substantial increase in SMR applications for the General Category channels and, on an intercategory basis, frequencies in the 800 MHz Business and Industrial/Land Transportation categories, the freeze was expanded to include the General Category channels and the filing of applications for intercategory sharing of the 806-821/851-866 MHz frequencies.¹⁰

⁸ Other application freezes that have had a similar negative impact include the paging freeze, the freezes on certain types of applications in the so-called “refarming bands,” the 18 GHz freeze, the 39 GHz freeze, the 220-222 MHz freeze, and the 900 MHz SMR freeze.

⁹ *See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 9 FCC Rcd 7988, 8042 (1994).

¹⁰ *Licensing of General Category Frequencies in 806-809.750/851-854.750 MHz Bands*, 10 FCC Rcd 13190 (1995) (freeze imposed October 4, 1995); *Intercategory Sharing of Private Mobile Radio Frequencies in the 806-821/851-854.750 MHz Bands*, 10 FCC Rcd 7350 (1995) (freeze imposed April 15, 1995).

The net impact of these freezes has been detrimental not only for SMR operators, but also for Business and Industrial/Land Transportation licensees requiring access to additional channels through intercategory sharing, and for other affected entities such as equipment manufacturers, end users, and members of the public. Under the terms of the freeze, existing SMR operators are allowed to add new sites only in limited circumstances.¹¹ As a result, a number of SMR providers have run out of capacity and have been unable to expand their systems in accordance with projected business plans or in response to the demands of subscribers and potential new customers.¹² This, in turn, has seriously dampened the market for SMR equipment and related products. Furthermore, the freeze on the filing of applications for intercategory sharing has prevented utilities and other legitimate Business and Industrial/Land Transportation eligibles from being able to gain access to channels needed to meet critical, internal communications requirements despite the fact that the channels in question have not been designated for auction.¹³

The February 8, 1996, freeze on the acceptance of new applications for paging systems has had a similar impact.¹⁴ Although the paging freeze also gives licensees limited flexibility to add new sites and is likely to be of lesser duration than the 800 MHz SMR freezes, it has

¹¹ In particular, incumbents on the SMR Category channels may add new sites and modify their facilities provided that such activities do not expand their existing service contour.

¹² *See Some Grow Despite Freeze; Others Hit Capacity*, Land Mobile Radio News, Vol. 50, No. 47 (Nov. 22, 1996).

¹³ *See, e.g., Intercategory Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz Bands*, 11 FCC Rcd 1452 (1995) (describing UTC's Petition for Reconsideration of the intercategory sharing freeze).

¹⁴ *Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development of Paging Systems*, 11 FCC Rcd 3108, 3136 (1996).

nevertheless slowed the development of paging operations by precluding significant expansion.¹⁵ In addition, to deter the filing of speculative applications in anticipation of the move to auctions, the paging freeze initially extended to all paging channels – including those that are shared – during the pendency of the underlying rule making.

The paging freeze was recently revised to allow new applicants to file applications for private, internal use systems on shared channels.¹⁶ For over a year, however, the freeze extended to shared paging frequencies and severely disrupted the operations of numerous legitimate, noncommercial entities that qualify for licensing in limited-eligibility Part 90 radio services by preventing them from having access to frequencies critical to their operations.¹⁷ In addition, by significantly impairing the ability of affected entities to order and install radio equipment, the

¹⁵ Under the terms of the initial paging freeze, incumbent licensees were allowed to add sites to existing systems or modify existing sites, provided that such additions or modifications did not expand the interference contour of the incumbent's existing system. The freeze was modified on April 23, 1996, to allow the filing of applications for new sites provided that the applicant certify that the proposed site is within 65 kilometers of an operating site licensed to that same applicant on that same channel prior to February 8, 1996. On June 10, 1996, the freeze was modified again to allow incumbents to expand 65 kilometers from sites for which applications were filed as of September 30, 1995, regardless of whether such applications were granted prior to February 8, 1996.

¹⁶ *Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development of Paging Systems*, FCC No. 97-59, ¶ 43 (released Feb. 24, 1997).

¹⁷ In its June 10, 1996, Petition for Reconsideration of the Commission's *First Report and Order* in the wide-area paging proceeding, Motorola appended affidavits from a number of affected entities describing the impact of the freeze on the operations of Part 90 eligibles seeking access to shared paging frequencies. The affidavits indicate that the freeze on shared paging operations has forced businesses such as IBM and others to forestall plans to update their communications systems and has placed the quality of critical internal communications, including non-emergency communications needs of hospitals and health care facilities, in jeopardy.

freeze had serious repercussions on other segments of the industry including equipment manufacturers.

The foregoing discussion clearly demonstrates that the indefinite duration of application freezes imposed in conjunction with proposals to convert to competitive bidding has had and continues to have a deleterious impact on affected industry sectors and members of the public. When processes require an application freeze, it is only reasonable and fair that the Commission impose discipline on itself by establishing realistic limits on the duration of such a freeze. Absent such a limitation, other important public interests, including the legitimate expectation of being able to carry on one's business with a degree of certainty, are severely undermined. Accordingly, Motorola urges the Commission to adopt an explicit rule stating that freezes imposed in connection with the conversion to auction processes may not last longer than 180 days. Such a rule would give service providers, end users, equipment manufacturers, and investors the certainty necessary to allow them to continue formulating their business plans and would prevent disruptions in the effective provision of service to the public. In extraordinary cases where extension of the rule is necessary, an extension process should be made available to the Commission. The extension process should, however, be premised on explicit criteria and should be used only in exceptional circumstances.

IV. Conclusion

Motorola commends the Commission's effort to identify rule changes that will simplify the competitive bidding process and improve its overall efficiency and effectiveness. As part of this effort, Motorola urges the Commission to adopt an explicit rule limiting the duration of all auction-related freezes to 180 days. In Motorola's view, the adoption of a rule to this effect will

promote the goals that prompted the Commission to initiate this rule making and will serve the public interest by injecting stability into the regulatory process.

Respectfully submitted,

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